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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/799,959	03/12/2004	Treg Bradley	3733-A3	9033
29370	7590	07/12/2005	EXAMINER	
ROBERT A. PARSONS 4000 N. CENTRAL AVENUE, SUITE 1220 PHOENIX, AZ 85012			ALIMENTI, SUSAN C	
			ART UNIT	PAPER NUMBER
			3644	

DATE MAILED: 07/12/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>	
	10/799,959	BRADLEY, TREG	
	<b>Examiner</b>	<b>Art Unit</b>	
	Susan C. Alimenti	3644	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) ☒ Responsive to communication(s) filed on 12 March 2004.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) ☒ Claim(s) 1-20 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-20 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
     Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
     Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)                        | 4) <input type="checkbox"/> Interview Summary (PTO-413)                     |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)               | Paper No(s)/Mail Date. _____  |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date _____  | 6) <input type="checkbox"/> Other: _____                                    |

## **DETAILED ACTION**

### ***Claim Rejections - 35 USC § 102***

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

2. Claims 1, 8, and 12 are rejected under 35 U.S.C. 102(b) as being anticipated by Ehrlich (USPN 4,869,019).

Ehrlich discloses the claimed invention comprising a housing including inner 15 and outer 13 walls, side walls 17, a bottom wall 5, and a top wall defined as the top flat portion connecting walls 13 and 15, as seen in Figure 3. A reservoir is formed by the at least the bottom wall 5, inside the enclosure and a pump 45 is located inside the reservoir. The pump is in liquid communication with said reservoir and a manifold 49 and distribution conduits 43. A plant supporting structure is located in the inner wall including plant receiving openings 33, that extend from inside the enclosure to outside the enclosure.

### ***Claim Rejections - 35 USC § 103***

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

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4. Claims 1-5, 8, 12-14, 17, and 20 are rejected under 35 U.S.C. 103(a) as being unpatentable over Koerper (US 5,099,606), and further in view of DiGiacinto (US 4,059,922).

Koerper discloses the plant growing apparatus substantially as claimed except he does not positively disclose how it is irrigated. Koerper's apparatus comprises a housing 1, including inner 2, and outer 3 walls, side walls 4, a top wall 7 and a bottom wall 6. At least the inner wall 2 defines a plant supporting structure 14 including a plurality of horizontally extending and vertically spaced corrugations having a plurality of plant receiving openings. The structure 14 includes a lower surface, defined as the major surface facing outward, and an upper surface defined as the minor surface facing upward. The two surfaces define a corrugation and lie substantially at a ninety degree angle from one another.

While Koerper is non-specific as to the irrigation system to be employed, it is well known that some type of internal watering system would be advantageous in a soilless growing environment such as this. DiGiacinto discloses a soilless growing system in the same field of endeavor, comprising an enclosure created by substantially vertical growing walls 13, 16. DiGiacinto teaches the use of an internal recycling pump 21 disposed in a reservoir 12 and connected to a manifold 24 and distribution conduits 26, for irrigating the plants growing on said walls. It would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the bottom wall 6 in Koerper's housing to create a reservoir and place a recirculating pump therein in order to efficiently water the plants growing on the sidewalls.

Regarding claims 5, and 14 outer wall 3 is made of a transparent material allowing the grower to view the plant roots as they grow. *Koerper*, col.2, lns.55-59.

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Regarding claim 4, Koerper as modified disclosed the claimed invention except the plant supporting structure is only disposed on one side. It would have been obvious to one having ordinary skill in the art to place a plant supporting structure on the other side in order to optimize plant production, since it has been held that the mere duplication of the essential working parts of a device involves only routine skill in the art. *St. Regis Paper Co. v. Bemis Co.*, 193 USPQ 8.

5. Claims 6, and 15 are rejected under 35 U.S.C. 103(a) as being unpatentable over Koerper in view of DiGiacinto as applied to claim 1-5, 8, 12-14, 17, and 20 above, and further in view of Flum (US 4,930,643).

Koerper discloses the claimed invention except it does not have downwardly extending feet, and mating openings in the top wall to facilitate vertical stacking. Flum illustrates a well-known stacking arrangement for multiple units that is advantageous as it optimizes space usage and available floor space. Flum's units 10 comprise four legs 16 extending from the bottom thereof and for mating openings 68 in a top thereof. By aligning the legs 16 with the openings 68, the units may easily be stacked upon one another. It would have been obvious to one having ordinary skill in the art at the time the invention was made to modify Koerper's device by removing hook 8, adding four legs and placing the unit on the floor so that mating openings can be formed in the top thereof in order to facilitate stacking of the units thus optimizing usable space in a greenhouse.

6. Claims 7, 9-11, 16, 18, and 19 are rejected under 35 U.S.C. 103(a) as being unpatentable over Koerper in view of DiGiacinto, and Flum as applied to claims 1-6, 8, 12-15, 17, and 20 above, and further in view of Boulter (US 6,269,589).

Koerper as modified, discloses the invention substantially as claimed except the planter is not arcuate shaped and does not stack horizontally in a mating engagement with like planters.

7. Regarding the arcuate shape, Bouler discloses a planter that is arcuate in shape and ready for connection with an adjacent planter. *Bouler*, Figure 6. Bouler further teaches that the arcuate shape it is advantageous as it allows more versatility in landscaping/aesthetic design. *Bouler*, col.1, lns.15-25. It would have been obvious to one having ordinary skill in the art at the time the invention was made to make Koerper's planter arcuate in shape in order to enhance landscaping designs. Further, it has been held that there is no invention in merely changing the shape or form of an article without changing its function except in a design patent." *Eszimo Pie Corp. V. Levous et al.*, 3 USPQ 23.

8. Regarding the horizontal stacking of planters, Bouler teaches a method for connecting adjacent planters (Figure 6) 80, via a mating dovetail connection comprising a male element 88 engaging with a female component 86. This arrangement allows the planters 80 to form a circular planter about a tree or pole and is well known in the art. It would have been obvious to one having ordinary skill at the time the invention was made to attach Koerper's modified arcuate planters in horizontal engagement in order to achieve well-known preferable and aesthetically pleasing landscaping arrangement.

9. Finally regarding claims 11, 18 and 19, and the combination of vertical and horizontal stacking of the planters, both Bouler (*Bouler*, col.1, lns.26-28) and Flum (*Flum*, Figure 8-10) teach the combination of a vertical and horizontal stacking in order to efficiently utilize available floor space. It would have been obvious to one having ordinary skill in the art at the time the

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invention was made to stack Koerper's device, as modified, both horizontally and vertically in order to effectively use available floor space.

***Conclusion***

11. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Susan C. Alimenti whose telephone number is 571-272-6897. The examiner can normally be reached on Monday-Friday, 9am-5pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Harvey Behrend can be reached on 571-272-6871. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

12. Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

SCA



**TERI PHAM LUU  
SUPERVISORY  
PRIMARY EXAMINER**